

Message Text

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FM AMEMBASSY VIENNA

TO SECSTATE WASHDC IMMEDIATE 4752

INFO AMEMBASSY BELGRADE IMMEDIATE

AMEMBASSY MEXICO IMMEDIATE

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C O N F I D E N T I A L SECTION 01 OF 04 VIENNA 00401

USIAEA

DEPT PASS IO/SCT

E.O. 11652: GDS

TAGS: IAEA, TECH, MNUC, ENRG

SUBJECT: AMENDMENT TO U.S.-AGREEMENT FOR COOPERATION

REF: VIENNA 225

1. IMMEDIATELY FOLLOWING DISCUSSIONS WITH IAEA SECRETARIAT REPORTED REFTEL AT WHICH PRELIMINARY COMMENTS WERE RECEIVED AS REFLECTED IN REVISED TEXT TRANSMITTED REFTEL, YUGOSLAVIAN RESREP CALLED ON DIRECTOR GENERAL EKLUND AND EDWARDS. FOLLOWING DAY, EDWARDS ANNOUNCED TO PERUVIAN RESREP, ARGENTINE ALTERNATE RESREP AND MISOFF, DURING NEGOTIATING SESSION RE QUADRIPARTITE AGREEMENT, THAT SUBJECT AMENDMENT WOULD NOT RPT NOT BE CONSIDERED AT FEBRUARY BOARD GOVS MEETING. WHEN EXPLANATION WAS SOUGHT PRIVATELY BY MISOFF, EDWARDS
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STATED THAT DIRECTOR GENERAL'S OPINION WAS THAT BOARD WOULD NOT RPT NOT APPROVE AMENDMENT AND THAT, IN ANY EVENT, DOCUMENT OF SUCH IMPORTANCE TO OTHER MEMBER STATES MUST BE DISTRIBUTED NLT JANUARY 20, IN ORDER PROVIDE THOROUGH STUDY. MOREOVER, SECRETARIAT WAS GIVING U.S. DRAFT MORE STUDY AND HAD IDENTIFIED THREE OR FOUR ADDITIONAL PARAGRAHS PROPOSED BY U.S. FOR

INCLUSION IN AMENDED ARTICLE V WHICH AGENCY UNLIKELY TO BE ABLE TO GUARANTEE.

2. AT NEGOTIATING SESSION JANUARY 16, ASSISTANT DIRECTOR GENERAL FISCHER (WHO HAD RETURNED FROM HOME LEAVE ONLY FEW DAYS EARLIER) REPEATED OPINION OF DIRECTOR GENERAL RE LIKELIHOOD THAT BOARD WOULD NOT RPT NOT APPROVE AGREEMENT AND STATED THAT SINCE SECRETARIAT HAD FOUND NO STATUTORY BASIS FOR GUARANTEEING ANY OF PROPOSED U.S. CONDITIONS, THERE WAS NO NEED FOR AMENDMENT. U.S. COULD MERELY ANNOUNCE TO MEMBER STATES THAT HENCEFORTH IT HAD NEW REQUIREMENTS. MISOFF TOOK ISSUE WITH BOTH POINTS MADE BY FISCHER AND CALLED ATTENTION (WITH DISCRETE SUPPORT BY RAINER AND HA-VINH PHUONG) TO STATUTE ART' ELEVEN F.3 AND 7 FOR STATUTORY BASIS. IN END, IT WAS AGREED TO CONSIDER APPROACH WHICH WOULD SET FORTH U.S. CONDITIONS IN ANNEX WHICH, AS PART OF AGREEMENT WOULD FALL WITHIN TERM QUOTE IN ACCORDANCE WITH THIS AGREEMENT UNQUOTE GOVERNING ALL TRANSFERS AND RETRANSFERS, IN FINAL PARA OF ARTICLE V.

3. TEXT OF AMENDMENT ARTICLES WHICH FOLLOWS REFLECTS FURTHER DRAFTING SUGGESTIONS BY SECRETARIAT IN CONNECTION APPROACH MENTIONED ABOVE, AS WELL AS MISSION'S UNDERSTANDING OF USG INTENTIONS. TEXT, IN FORM OF DRAFT, DATED JANUARY 17, HAS BEEN GIVEN INFORMALLY TO CONFIDENTIAL

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SECRETARIAT JANUARY 18 FOR THEIR COMMENTS, IN INTEREST OF MEETING JANUARY 20 DEADLINE, WITH CLEAR UNDERSTANDING THAT IT IS MISSION PRODUCT ONLY AND ONE WHICH WASHINGTON HAS NOT YET SEEN:

QUOTE ARTICLE I

QUOTE ARTICLE IV OF THE AGREEMENT FOR COOPERATION IS AMENDED BY THE ADDITION OF THE FOLLOWING SENTENCES:

QUOTE THE APPLICABLE LAWS, REGULATIONS AND LICENSE REQUIREMENTS OF THE UNITED STATES INCLUDE CRITERIA FOR THE ARRANGEMENTS FOR TRANSFER AND EXPORT AND THE PERFORMANCE OF SERVICES REFERRED TO IN THE FOREGOING SENTENCE AS SET FORTH IN ANNEX A. ANNEX A MAY BE MODIFIED, WITHOUT AMENDMENT TO THIS AGREEMENT, BY WRITTEN NOTIFICATION TO THE AGENCY BY THE UNITED STATES. ANY SUCH NOTIFICATION SHALL BECOME EFFECTIVE UPON RECEIPT BY THE AGENCY OF SUCH WRITTEN NOTIFICATION.

QUOTE ARTICLE II

QUOTE THE AGREEMENT FOR COOPERATION IS AMENDED BY THE
ADDITION OF ANNEXES AS FOLLOWS:

QUOTE ANNEX A

QUOTE A. ANY AGREEMENT ENTERED INTO AFTER (EFFECTIVE
DATE OF AMENDMENT), IN CONNECTION WITH THE USE IN ANY
AGENCY ACTIVITIES IN A NON-NUCLEAR WEAPONS MEMBER STATE
OR GROUP OF MEMBER STATES OF MATERIAL, EQUIPMENT OR
FACILITIES MADE AVAILABLE TO THE AGENCY PURSUANT TO THE

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AGREEMENT FOR COOPERATION, SHALL INCLUDE PROVISIONS
FOR THE APPLICATION OF SAFEGUARDS BY THE UNITED STATES
IN THAT MEMBER STATE OR GROUP OF MEMBER STATES IN THE
EVENT THAT THE AGENCY IS, FOR ANY REASON, UNABLE TO
CONTINUE TO APPLY ITS SAFEGUARDS WITH RESPECT TO SUCH
MATERIAL, EQUIPMENT OR FACILITIES.

QUOTE B. MATERIAL TRANSFERRED PURSUANT TO THE AGREEMENT
FOR COOPERATION AND MATERIAL USED IN OR PRODUCED THROUGH
THE USE OF ANY MATERIAL, EQUIPMENT OR FACILITIES TRANS-
FERRED PURSUANT TO THAT AGREEMENT MAY BE STORED BY THE
AGENCY OR ITS MEMBER STATES TO THE EXTENT CONSISTENT
WITH THE AGENCY STATUTE: PROVIDED THAT PLUTONIUM OR
URANIUM-233 (OTHER THAN THAT CONTAINED IN IRRADIATED
FUEL ELEMENTS) OR URANIUM ENRICHED TO TWENTY PERCENT

OR MORE IN THE ISOTOPE 235 SHALL BE STORED ONLY IN
FACILITIES AGREED TO IN ADVANCE BY THE UNITED STATES.

QUOTE C. MATERIAL TRANSFERRED PURSUANT TO THE AGREEMENT
FOR COOPERATION AND MATERIAL USED IN OR PRODUCED
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THROUGH THE USE OF ANY MATERIAL, EQUIPMENT OR FACILITIES
TRANSFERRED PURSUANT TO THAT AGREEMENT SHALL NOT BE
REPROCESSED, OR (IN THE CASE OF PLUTONIUM,
URANIUM-233, URANIUM ENRICHED TO TWENTY PERCENT OR MORE
IN THE ISOTOPE 235, OR IN THE CASE OF OTHER MATERIAL
WHICH HAS BEEN IRRADIATED) OTHERWISE ALTERED IN FORM OR
CONTENT UNLESS THE UNITED STATES AGREES.

QUOTE D. URANIUM TRANSFERRED FROM THE UNITED STATES
PURSUANT TO THE AGREEMENT FOR COOPERATION AND URANIUM
USED IN ANY MATERIAL OR EQUIPMENT SO TRANSFERRED MAY BE
ENRICHED UP TO TWENTY PERCENT IN THE ISOTOPE 235 AFTER
TRANSFER ONLY IF THE UNITED STATES AGREES. SUCH
URANIUM WILL NOT BE ENRICHED AFTER TRANSFER TO TWENTY
PERCENT OR GREATER IN THE ISOTOPE 235 UNLESS
SPECIFICALLY PROVIDED BY AN AMENDMENT TO THE AGREEMENT
FOR COOPERATION OR BY A SUBSEQUENT SEPARATE AGREEMENT
TO WHICH THE UNITED STATES IS A PARTY.

QUOTE E. ADEQUATE PHYSICAL PROTECTION SHALL BE MAINTAINED WITH RESPECT TO ANY MATERIAL, EQUIPMENT OR FACILITIES TRANSFERRED PURSUANT TO THE AGREEMENT FOR COOPERATION OR USED IN OR PRODUCED THROUGH THE USE OF ANY MATERIAL, EQUIPMENT OR FACILITIES SO TRANSFERRED. PRIOR TO ANY SUCH TRANSFER THE RECIPIENT STATE SHALL AGREE TO THE LEVELS FOR THE APPLICATION OF PHYSICAL PROTECTION SET FORTH IN ANNEX B, AND TO THE MAINTENANCE OF ADEQUATE PHYSICAL PROTECTION MEASURES IN ACCORDANCE WITH THOSE LEVELS. ANNEX B MAY BE MODIFIED WITHOUT AMENDMENT TO THE AGREEMENT FOR COOPERATION, BY WRITTEN NOTIFICATION TO THE AGENCY BY THE UNITED STATES. ANY SUCH MODIFICATION SHALL BECOME EFFECTIVE UPON RECEIPT BY THE AGENCY OF SUCH NOTIFICATION. THE PHYSICAL PROTECTION MEASURES TO BE MAINTAINED BY THE RECIPIENT
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STATE SHALL AS A MINIMUM PROVIDE PROTECTION COMPARABLE TO THAT SET FORTH IN AGENCY DOCUMENT INFCIRC/225/REV.1, ENTITLED, QUOTE THE PHYSICAL PROTECTION OF NUCLEAR MATERIALS UNQUOTE, AS IT MAY BE REVISED FROM TIME TO

TIME.

QUOTE F. NO SENSITIVE NUCLEAR TECHNOLOGY MAY BE TRANSFERRED PURSUANT TO THE AGREEMENT FOR COOPERATION UNLESS SPECIFICALLY PROVIDED BY AN AMENDMENT TO THAT AGREEMENT OR BY A SUBSEQUENT SEPARATE AGREEMENT TO WHICH THE UNITED STATES IS A PARTY. INNER QUOTE SENSITIVE NUCLEAR TECHNOLOGY END INNER QUOTE MEANS ANY INFORMATION (INCLUDING INFORMATION INCORPORATED IN EQUIPMENT OR FACILITIES) WHICH IS NOT AVAILABLE TO THE PUBLIC AND WHICH IS IMPORTANT TO THE DESIGN, CONSTRUCTION, FABRICATION, OPERATION OR MAINTENANCE OF ANY FACILITY DESIGNED OR USED PRIMARILY FOR URANIUM ENRICHMENT, REPROCESSING OF NUCLEAR FUEL, HEAVY WATER PRODUCTION, OR FABRICATION OF NUCLEAR FUEL CONTAINING PLUTONIUM OR SUCH OTHER INFORMATION AS THE UNITED STATES MAY DESIGNATE PRIOR TO ITS TRANSFER.

QUOTE G. IF, AT ANY TIME AFTER (EFFECTIVE DATE OF AMENDMENT), A NON-NUCLEAR WEAPONS MEMBER STATE IN WHICH THERE IS AN AGENCY ACTIVITY INVOLVING MATERIAL, EQUIPMENT OR FACILITIES TRANSFERRED PURSUANT TO THE AGREEMENT FOR COOPERATION:

QUOTE (1) CARRIES OUT ANY NUCLEAR ACTIVITY WITH RESPECT TO WHICH THE APPLICATION OF AGENCY SAFEGUARDS IS NOT THEN PROVIDED FOR IN AN AGREEMENT IN FORCE WITH THE AGENCY AS CONTEMPLATED IN PARAGRAPH A OF ARTICLE V OF THE AGREEMENT FOR COOPERATION,

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FM AMEMBASSY VIENNA

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INFO AMEMBASSY BELGRADE IMMEDIATE

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QUOTE (2) DOES NOT PERMIT THE AGENCY TO APPLY ITS SAFEGUARDS, IN ACCORDANCE WITH THE AGENCY'S SAFEGUARDS SYSTEM, TO ANY NUCLEAR ACTIVITY CARRIED OUT WITHIN ITS TERRITORY, UNDER ITS JURISDICTION OR UNDER ITS CONTROL ANYWHERE.

QUOTE (3) DOES NOT COMPLY WITH ANY PROVISION OF THE AGREEMENT FOR COOPERATION, INCLUDING THE ANNEX THERETO,

QUOTE (4) DETONATES A NUCLEAR EXPLOSIVE DEVICE, OR

QUOTE (5) IS IN MATERIAL NON-COMPLIANCE WITH AN AGENCY SAFEGUARDS AGREEMENT,

QUOTE THE UNITED STATES SHALL HAVE THE RIGHT TO:

QUOTE (I) CEASE FURTHER COOPERATION WITH THE MEMBER UNDER THE AGREEMENT FOR COOPERATION; AND

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QUOTE (II) REQUIRE THE RETURN OF ANY MATERIAL, EQUIPMENT OR FACILITIES SUBJECT TO THE AGREEMENT FOR COOPERATION. UNQUOTE

QUOTE ANNEX B

NOTE: TEXT OF ANNEX, ADDRESSING PHYSICAL PROTECTION, UNCHANGED, EXCEPT FOR OPENING PHRASE WHICH READS QUOTE PURSUANT TO PARAGRAPH (E) OF ANNEX A UNQUOTE.

QUOTE ARTICLE III

QUOTE ARTICLE V OF THE AGREEMENT FOR COOPERATION IS AMENDED AS FOLLOWS:

QUOTE A. MATERIAL, EQUIPMENT OR FACILITIES MADE AVAILABLE TO THE AGENCY PURSUANT TO THIS AGREEMENT IN CONNECTION WITH AN AGENCY PROJECT AGREEMENT ENTERED INTO AFTER THE ENTRY INTO FORCE OF THIS AMENDMENT SHALL NOT BE USED IN ANY AGENCY ACTIVITIES IN A NON-NUCLEAR WEAPON MEMBER STATE OR GROUP OF MEMBER STATES UNLESS, AT THE DATE OF TRANSFER, THE MEMBER STATE OR GROUP OF MEMBER STATES HAS ENTERED INTO AN AGREEMENT OR AGREEMENTS WITH THE AGENCY FOR THE APPLICATION OF SAFEGUARDS IN ACCORDANCE WITH THE AGENCY'S STATUTE AND THE AGENCY'S

SAFEGUARDS SYSTEM WITH RESPECT TO ALL NUCLEAR ACTIVITIES
BEING CARRIED OUT AT THAT DATE WITHIN ITS TERRITORY,
UNDER ITS JURISDICTION OR UNDER ITS CONTROL ANYWHERE.
FOR THE PURPOSES OF THIS AGREEMENT, AN AGREEMENT WITH
THE AGENCY PURSUANT TO ARTICLE III(4) OF THE TREATY ON
THE NON-PROLIFERATION OF NUCLEAR WEAPONS SHALL BE CON-
SIDERED TO FULFILL THE CONDITION STATED IN THE FORE-
GOING SENTENCE.

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QUOTE B. SAFEGUARDS IN ACCORDANCE WITH THE AGENCY'S
STATUTE AND THE AGENCY'S SAFEGUARDS SYSTEM SHALL BE
APPLIED WITH RESPECT TO ALL AGENCY ACTIVITIES IN WHICH
MATERIAL, EQUIPMENT OR FACILITIES MADE AVAILABLE
PURSUANT TO THIS AGREEMENT ARE USED. ALL AGREEMENTS
WITH THE AGENCY PROVIDING FOR THE APPLICATION OF SUCH
SAFEGUARDS IN SUCH AGENCY ACTIVITIES IN A MEMBER STATE
OR GROUP OF MEMBER STATES ENTERED INTO AFTER THE ENTRY
INTO FORCE OF THIS AMENDMENT, SHALL INCLUDE INTER ALIA:

QUOTE 1) PROVISIONS RELATING THE DURATION OF THE
AGREEMENT TO THE PERIOD OF ACTUAL USE OF THE SUPPLIED
MATERIAL, EQUIPMENT OR FACILITIES IN THE RECIPIENT
MEMBER STATE OR GROUP OF MEMBER STATES;

QUOTE 2) PROVISIONS FOR TERMINATING THE AGREEMENT,
FORMULATED IN SUCH A WAY THAT THE RIGHTS AND OBLIGATIONS
OF THE PARTIES CONTINUE TO APPLY IN CONNECTION WITH THE
SUPPLIED MATERIAL, EQUIPMENT OR FACILITIES AND WITH
SPECIAL NUCLEAR MATERIAL USED IN OR PRODUCED THROUGH
THE USE OF ANY SUCH MATERIAL, EQUIPMENT OR FACILITIES,
INCLUDING SUBSEQUENT GENERATIONS OF SPECIAL NUCLEAR
MATERIAL, UNTIL SUCH TIME AS THE AGENCY HAS TERMINATED
THE APPLICATION OF SAFEGUARDS THERETO; AND

QUOTE 3) PROVISIONS ACCORDING TO WHICH THE RECIPIENT
MEMBER STATE OR GROUP OF MEMBER STATES SHALL, UPON THE
REQUEST OF THE UNITED STATES, INFORM OR PERMIT THE
AGENCY TO INFORM THE UNITED STATES OF THE STATUS OF ALL
INVENTORIES OF SOURCE OR SPECIAL NUCLEAR MATERIALS
SUBJECT TO AGENCY SAFEGUARDS PURSUANT TO ALL AGREEMENTS
WITH SUCH STATE OR STATES: HOWEVER, IN THE CASE OF A

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STATE OR STATES PARTY TO THE TREATY ON THE NON-
PROLIFERATION OF NUCLEAR WEAPONS, THE UNITED STATES
NEED BE INFORMED ONLY WITH RESPECT TO THE STATUS OF
INVENTORIES OF SOURCE OR SPECIAL NUCLEAR MATERIAL MADE
AVAILABLE PURSUANT TO THIS AGREEMENT.

QUOTE C. MATERIAL, EQUIPMENT OR FACILITIES TRANSFERRED
PURSUANT TO THIS AGREEMENT, AND MATERIAL USED IN OR
PRODUCED THROUGH THE USE OF ANY SUCH MATERIAL, EQUIP-
MENT OR FACILITIES, SHALL NOT BE USED DOR NUCLEAR
WEAPONS OR ANY NUCLEAR EXXLOSIVE DEVICE, ,OR RESEARCH
ON OR DEVELOPMENT OF NUCLEAR EXPLOSIVE DEVICE, OR FOR
ANY OTHER MILITARY PURPOSE.

QUOTE D. MATERIAL, EQUIPMENT OR FACILITIES TRANSFERRED
PURSUANT TO THIS AGREEMENT AND ANY SPECIAL NUCLEAR
MATERIAL USED IN OR PRODUCED THROUGH THE USE OF SUCH
MATERIAL, EQUIPMENT OR FACILITIES MAY BE TRANSFERRED OR
RETRANSFERRED ONLY IN ACCORDANCE WITH THIS AGREEMENT AND
UPON AGREEMENT BETWEEN THE PARTIES. UNQUOTE
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QUOTE ARTICLE IV

QUOTE THIS AMENDMENT SHALL ENTER INTO FORCE ON THE DATE
ON WHICH THE AGENCY RECEIVES FROM THE UNITED STATES
WRITTEN NOTIFICATION THAT IT HAS COMPLIED WITH ALL
REQUIREMENTS FOR SUCH ENTRY INTO TORCE. UNQUOTE.

4. MISSION WILL REPORT SECRETARIAT REACTION TO FOREGOING TEXT.

5. IN LIGHT POSITION ANNOUNCED BY EDWARDS REPORTED PARA 1 ABOVE, I SPOKE TO DIRGEN EKLUND AND POINTED OUT IMPORTANCE USG ATTACHED TO CONSIDERATION OF AMENDMENT BY BOARD AT FEBRUARY MEETING. I REPEATED THIS TO EKLUND ON TWO SUBSEQUENT OCCASIONS, MOST RECENTLY AFTER FISCHER'S REITERATION OF SECRETARIAT'S POSITION REPORTED PARA 2 ABOVE, POINTING OUT THAT USG WISHED TO HAVE DOCUMENT ISSUED WELL IN ADVANCE OF BOARD TO PERMIT STUDY BY OTHER BOARD MEMBERS AND ASSESSMENT BY USG OF PROSPECTS FOR APPROVAL. I STRESSED THAT USG WANTED OPTION OF AMENDED AGREEMENT AVAILABLE AS ONE ALTERNATIVE IN ADDRESSING FUEL SUPPLY FOR YUGOSLAVIA. EKLUND ASSURED ME THAT SECRETARIAT WOULD COOPERATE IN WORKING OUT AMENDMENT EXPEDITIOUSLY IN ORDER THAT DOCUMENT BE DISTRIBUTED WELL IN ADVANCE. HE URGED THAT USG CONSULT WIDELY PRIOR TO BOARD IN ORDER TO ASSESS PROSPECTS AND THAT, IF CLEAR CONSENSUS WAS NOT RPT NOT PERCEIVED, THAT USG NOT RPT NOT PRESS FOR ACTION IN FEBRUARY MEETING, BUT RATHER TO SUGGEST ITS CONSIDERATION AT SPECIAL MEETING OF BOARD AT LATER DATE, PERHAPS IN MARCH. STONE

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Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 3751131
Secure: OPEN
Status: NATIVE
Subject: AMENDMENT TO U.S.-AGREEMENT FOR COOPERATION
TAGS: TECH, MNUC, ENRG, IAEA
To: STATE
Type: TE
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